

Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Danville and Nonesuch, Kentucky))

MM Docket No. 01-169
RM-10145

REPORT AND ORDER
(Proceeding Terminated)

RECEIVED & INSPECTED
MAY 05 2003
FCC - MAILROOM

Adopted: April 30, 2003

Released: May 5, 2003

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the Audio Division considers herein a *Notice of Proposed Rule Making*,¹ requesting the reallocation of Channel 296A from Danville, Kentucky, to Nonesuch, Kentucky, and modification of the license for Station WHIR to specify operation on Channel 296A at Nonesuch. Clear Channel filed comments and reply comments expressing continuing interest in the allotment of Channel 296A at Nonesuch. Reply comments were filed by L.M. Communications, Inc. ("L.M."). Late-filed comments with motions to accept were filed by Clear Channel and L.M. We shall accept the comments to ensure a complete and accurate record in this proceeding.²

2. Clear Channel filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.³ Clear Channel contends that its proposal will result in a preferential arrangement of allotments by providing Nonesuch, Kentucky, with its first local service while not depriving Danville, Kentucky, of local service as Station WHIR(AM) and NCE Station WDFB-FM are licensed to Danville.⁴ In addition to providing a first local service to Nonesuch, Clear Channel points out that the proposal will eliminate existing short-spacings between Station WUHU, Smiths Grove, Kentucky, and Station WCTT, Corbin, Kentucky, and will have a

¹ *Danville and Nonesuch, Kentucky*, 16 FCC Rcd 14603 (MMB 2001).

² The late-filed comments submitted by Clear Channel and L.M. restate their respective positions on the allotment of Channel 296A at Nonesuch, Kentucky, but fail to provide any new information of decisional significance.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and, (4) Other public interest matters [Co-equal weight is given to priorities (2) and (3).]

net gain of 240,000 people served by Station WHIR.⁵

3. As stated in the *Notice*, staff research failed to locate information supporting community status for Nonesuch. Although Clear Channel indicated that there are some businesses in Nonesuch, it did not identify those entities with addresses or show that they are intended to serve residents of Nonesuch. Therefore, Clear Channel was requested to provide evidence supporting community status for Nonesuch.⁶ In response, Clear Channel states that Nonesuch has a stable population and it can be located on a number of local maps around the intersection of Cummins Ferry and Fords Mills Road in Woodford County. Clear Channel admits that a precise population figure for Nonesuch is not available but that the Woodford County Clerk confirms that Nonesuch is the location for a voting precinct and that the precinct had 850 registered voters in 2001. Clear Channel states that Irish Acres Gallery of Antiques, a general store doing business under the name "Nunsuch Grocery", Nonesuch Frames & Things, Nonesuch Farm and Knotmuch Farm all are located in Nonesuch, Kentucky. Clear Channel also states that although Nonesuch has no local government, the county fire department operates a fire station in Nonesuch. A local angler group identifies a stretch of land along the Kentucky River with Nonesuch and the Woodford County Chamber of Commerce includes the area called Nonesuch in its brochure. Clear Channel submitted a copy of a petition signed by 22 people agreeing that Nonesuch is its own community. Clear Channel also provided copies of declarations from people stating that they were residents of a community named Nonesuch.

4. L.M., licensee of Stations WBTF(FM), Midway, Kentucky, and WCDA(FM), Versailles, Kentucky, filed reply comments requesting denial of the proposed allotment at Nonesuch, Kentucky. L.M. argues that the meager evidence provided by Clear Channel fails to establish that Nonesuch, Kentucky, is a community for allotment purposes. According to L.M., a physical examination of the area Clear Channel describes as the community of Nonesuch is a rural area with a few houses near the intersection of Cummins Ferry Road and Fords Mill Road. There are no traffic lights in the area with the speed limit posted at 55 miles per hour, evidencing that there is no need for cars to proceed at a lower speed because of a business or residential area. L.M. contends that Clear Channel failed to identify any organizations, civic groups, schools or churches that are located in Nonesuch let alone have a nexus with Nonesuch as a separate community. Further, Clear Channel did not show a population number, a local government, zip code, post office, or other municipal services supporting community status. L.M. argues that of the several businesses cited by Clear Channel as located in Nonesuch, Clear Channel neglected to show that these businesses are intended to serve Nonesuch specifically as opposed to the larger communities of Versailles and Midway. In fact the addresses for the Irish Acres Antique Gallery, Glitz Restaurant and the Western Fields Guest Cottage are listed as Versailles, Kentucky, not Nonesuch, Kentucky. L.M. states that although Nonesuch is a voting precinct, Clear Channel fails to mention that Nonesuch is essentially one of several voting booths for Woodford County and that a voting precinct does not establish local government. L.M. obtained

⁵ According to a staff engineering analysis, the licensed site for Station WHIR, 37-40-28 and 84-46-06, as a 73.215 applicant, is short spaced to the stations at Smiths Grove and Corbin. Station WHIR has a construction permit at coordinates 37-45-35 and 84-44-35 which appears to be fully spaced to the stations at Smiths Grove and Corbin. See BPH19970602IB.

⁶ See *Kenansville, Florida*, 10 FCC Rcd 9831 (1995).

declarations and affidavits from individuals who reside in the Nonesuch neighborhood stating that they work, shop, and send their children to school in nearby Versailles and Lexington, and that they do not consider Nonesuch to be a separate, distinct and independent community. L.M. argues that the information provided by Clear Channel demonstrates that Nonesuch is a rural neighborhood adjacent to and served by the larger city of Versailles, Kentucky, which has a 2000 population of 7,269 people. L.M. argues that *Kenansville, Florida*, the precedent on which Clear Channel relies in asserting that Nonesuch is a community for allotment purposes is inapposite. Kenansville had some of the indicia of community status with seven civic organizations with Kenansville in their names, a significant number of business located in Kenansville and the county of which Kenansville is a part had issued licenses for at least 30 businesses in Kenansville, including three restaurants and a motel. In contrast, none of the businesses listed by Clear Channel include Nonesuch in their names, no civic organizations were identified and the postal addresses of all the businesses cited by Clear Channel are in Versailles.

5. Generally, Section 307(b) of the Communications Act of 1934, as amended, requires that channel allotments be made to "communities." The Commission accords community status to geographically identifiable population groupings. The fact that a location is incorporated or is otherwise listed in the Census is generally sufficient to confer community status upon it. However, where a proposed location is neither incorporated nor listed in the Census, such as Nonesuch, we request that the petitioner supply the Commission with information establishing community status. The Commission is looking for the distinctive elements of a community such as local government, commercial or industrial organizations, civic associations, schools or a library, a local newspaper, bank or gas station, and religious organizations serving the community or whether there is a sense of unity and involvement in community concerns and local activities as evidenced by residents that reside in the area.⁷ Using this criteria, we note that although Nonesuch is not listed in the U.S. Census or incorporated, we accept Clear Channel's information that such a place does exist. However, we do not believe that Clear Channel has provided sufficient evidence establishing community status for allotment purposes for Nonesuch. Clear Channel has argued that the county operates a fire station in the area calling it the Nonesuch branch and that Woodford County maintains a voting precinct in Nonesuch. Clear Channel further states that five commercial businesses are located in the area, three of which use "Nonesuch" in their name and provide service to the area but without being specific as to whom the businesses are serving. These items of evidence are insufficient to indicate that the social, commercial, religious or governmental aspects have been met. Clear Channel also provided a petition and declarations from people stating that they are residents of a community named Nonesuch. Although street addresses were provided in the petition and the declarations, no city, state or zip code was provided. Staff research indicates that the mailing address is Versailles, Kentucky, rather than Nonesuch, Kentucky.

6. Based on the information provided by Clear Channel, we conclude that it has failed to establish that Nonesuch qualifies as a community for allotment purposes and therefore it would not serve the public interest to reallocate Channel 296A from Danville, Kentucky, a community of over 12,000 people to Nonesuch, Kentucky, an area with an undeterminable population, not listed in the U.S. Census.

⁷ See *North Naples, Florida*, 41 RR 2d 1549 (1977).

7. IT IS ORDERED, That the Petition for Rule Making filed by Clear Channel Broadcasting Licenses, Inc. (RM-10145) IS DENIED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau